

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petition for Waiver of Rules Requiring
Support of TTY Technology

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GN Docket No. 15-178

TRACFONE WIRELESS, INC.'S PETITION FOR TEMPORARY WAIVER

TracFone Wireless, Inc. ("TracFone"), pursuant to Federal Communications Commission ("Commission") Rule 1.3 (47 C.F.R. § 1.3), hereby requests a temporary waiver of Commission Rules 20.18(c) and 64.603 (47 C.F.R. §§ 20.18(c), 64.603), which set forth common carriers' obligations to support text telephony ("TTY") technology in various circumstances.¹ TracFone further requests the Commission grant its waiver request on an expedited and interim basis for the reasons stated in this Petition.

BACKGROUND

TracFone is a reseller of commercial mobile radio service ("CMRS") throughout the United States. TracFone is currently the nation's leading provider of prepaid wireless telecommunications services, serving more than 25 million customers nationwide. TracFone provides service by reselling services obtained from various licensed operators of wireless networks. TracFone's arrangements with those providers enable it to offer CMRS service wherever any of those providers offer service. As a reseller, TracFone does not own or operate any facilities used to provide service. Therefore, TracFone has no control over its underlying

¹ TracFone also requests waiver of all other Commission Rules that require telecommunications services and equipment and advanced communications services and equipment to be capable of TTY connectability and TTY signal compatibility. *See* 47 C.F.R. §§ 6.3, 6.5, 7.3, 7.5, 14.20, 14.21.

carriers' facilities nor the technologies employed by those carriers on their communications networks.

AT&T, one of TracFone's underlying carriers, offers its ends users access to an Internet protocol ("IP")-based voice network, in addition to AT&T's cellular communications network. AT&T recently advised TracFone that commencing in June 2017, IP-based voice services, also known as Wi-Fi calling, would be available to end users who receive service from AT&T's resellers, such as TracFone. Wi-Fi calling offers many benefits to end users, including allowing calls in areas that are not covered by AT&T's cellular network.

Although there are benefits to Wi-Fi calling, IP-based networks are not able to support text telephony ("TTY") technology. The Commission's rules, which were amended in December 2016,² set forth requirements for communications service providers, such as CMRS providers (including resellers), to support TTY technology. Specifically, CMRS providers must support the use of TTY to access 911 services (47 C.F.R. § 20.18(c)) and access to telecommunications relay services ("TRS") by dialing 711 (47 C.F.R. § 64.603).³ However, if a CMRS provider uses voice over IP facilities to provide service, then it may provide access to 911 services and allow 711 dialing to reach TRS via real-time text ("RTT") communications instead of via TTY.⁴ In the RTT Report and Order, the Commission established timelines for implementation of RTT by entities that use wireless IP-based facilities and choose to support RTT instead of TTY technology.

² See *Transition from TTY to Real-Time Text Technology et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568 (2016) ("RTT Report and Order").

³ In addition, various other Commission rules require telecommunications and advanced communications services providers to support TTY technology. See 47 C.F.R. §§ 6.3, 6.5, 7.3, 7.5, 14.20, 14.21.

⁴ See 47 C.F.R. §§ 20.18(c), 64.603(a).

As discussed in the RTT Report and Order, several wireless carriers that use IP enabled networks, including AT&T, petitioned for and received waivers of the TTY support obligations in the Commission's rules.⁵ Each of the waivers of the TTY support obligations expires on December 31, 2017 or "upon the effective date of rules providing for alternative IP-based accessibility solutions, whichever is earlier."⁶ Under the Commission's rules, a Tier I service provider (*i.e.*, a CMRS provider offering nationwide service) that prefers to support RTT access in lieu of TTY technology and that does not wish to seek an extension of its current waiver must meet certain RTT requirements by December 31, 2017⁷ and additional requirements by December 31, 2019.⁸ The Commission clarified that the initial compliance deadlines (*i.e.*, December 31, 2017 for Tier I service providers and June 30, 2020 for non-Tier I service providers) are not applicable to CMRS resellers because "they may not be able to support RTT to the extent necessary until after the technology has been implemented by both Tier I and non-Tier I facilities-based CMRS providers."⁹

Although the Commission has acknowledged that a CMRS reseller's ability to support RTT on an IP-based network depends on whether its underlying carriers have implemented that

⁵ See, *e.g.*, *Petition for Waiver of Rules Requiring Support of TTY Technology*, Order, 30 FCC Rcd 10855 (CGB, PSHSB, WTB, WCB 2015) ("AT&T TTY-RTT Transition Waiver Order").

⁶ *Id.* ¶ 21.

⁷ See RTT Report and Order, ¶ 66 ("[b]y December 31, 2017, each Tier I service provider must either (1) offer a downloadable application or plug-in that supports RTT or (2) comply with the following: (i) implement in its core network the capability to support RTT; (ii) offer at least one new handset that supports native RTT functionality; and (iii) for all authorized end user devices specified on or after that date, include in future design specifications the requirement to support RTT."). The compliance date for non-Tier I service providers is June 30, 2020.

⁸ *Id.* ¶ 67 ("[b]y December 31, 2019, each Tier I service provider opting to support RTT in lieu of TTY technology must provide such support for all new authorized user devices activated on its networks."). The compliance date for non-Tier I service providers is June 30, 2021.

⁹ *Id.* ¶ 66 n.249.

technology, CMRS resellers are not excused from complying with their obligation to support TTY technology. Therefore, so that TracFone may offer its end users access to Wi-Fi calling on AT&T's network, TracFone requests a temporary waiver consistent with the waiver previously granted to AT&T.

ARGUMENT

Pursuant to Commission Rule 1.3, the Commission may waive a rule for “good cause shown.”¹⁰ The Commission has found that a waiver is appropriate “where the particular facts make strict compliance inconsistent with the public interest.”¹¹ The Commission also considers “hardship, equity, or more effective implementation of overall policy on an individual basis.”¹² As demonstrated in this Petition, TracFone's status as a CMRS reseller warrants a temporary waiver of the Commission rules requiring CMRS providers to support TTY technology.

A. There is Good Cause for the Commission to Grant TracFone's Request for Waiver

The Commission has previously determined that a temporary waiver of the rules requiring that TTY technology be supported for IP-based wireless services meets the Commission's waiver standards and is consistent with the Commission's goal of ensuring access to telecommunications for individuals with disabilities. As explained in the AT&T TTY-RTT Transition Waiver Order, there are technical barriers to reliably supporting TTY transmission over IP networks, the overall use of TTY on wireless networks has declined, and there are

¹⁰ 47 C.F.R. § 1.3.

¹¹ AT&T TTY-RTT Transition Waiver Order, ¶ 8 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

¹² *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

benefits to allowing for the development of IP-based accessibility solutions.¹³ When granting AT&T's request for waiver of the TTY support rules, the Commission recognized that there may be similarly situated providers that may want to seek a waiver similar to AT&T's waiver. The Commission stated the following regarding such requests:

Any carrier or service provider that seeks the benefit of such a waiver, therefore should file a request describing the wireless service it provides, explaining the difficulties it has encountered or expects to encounter in providing connectivity to TTY devices over wireless IP networks, stating the extent to which it expects that it will be able to deploy accessible alternatives to TTY technology by December 31, 2017, and committing to compliance with the reporting requirements and other conditions stated herein.¹⁴

From a technical perspective, TracFone provides the same wireless service provided by AT&T. While TracFone may offer products, terms and conditions, and a customer experience that differ from those offered by AT&T, TracFone relies on AT&T's communications network to provide service to its customers. Therefore, when the Commission's rules require a CMRS reseller to comply with requirements applicable to a communications network, such as directing the network to support TTY technology, TracFone is only capable of complying to the extent that its underlying carrier complies with those rules. TracFone's sole difficulty in providing connectivity to TTY devices over a wireless IP network is that it is limited by the technology that AT&T's network can support. TracFone will be able to offer its customers accessible alternatives to TTY technology, namely RTT, as soon as AT&T deploys RTT. Accordingly, TracFone requests a temporary waiver only until such time as AT&T provides an IP-based accessibility solution that is available to CMRS resellers. Based on the foregoing, TracFone is similarly situated to AT&T with respect to its need for a waiver of the TTY support requirements for calls using an IP network, and as such, should also receive a waiver.

¹³ See *id.* ¶¶ 9-16.

¹⁴ *Id.* ¶ 22.

B. TracFone Will Comply with the Notice Obligations Imposed on AT&T as a Condition to Grant of Its Waiver Request.

During the waiver period TracFone will apprise its customers that: (1) TTY technology will not be supported for calls to 911 services over IP-based wireless services and (2) there are available alternative PSTN-based and IP-based accessibility solutions for such calls for persons with communications disabilities. The foregoing notice will be prominently placed and in plain language on TracFone's website, promotional materials, communications with national consumer organizations, and in other communications with customers as appropriate. The notice will also identify other text-based alternatives to 911, including TTY capability over PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 where available.¹⁵ TracFone also will post on its website instructions to dial 711 from TTY devices anywhere in the United States to be connected with a specially-trained communications assistant. In addition, TracFone will host on its website (www.tracfone.com) the RTT application which will be available for customers to download. TracFone directs the Commission's attention to AT&T's most recent (and presumably final) status report.¹⁶ As explained in that latest AT&T Status Report, AT&T remains on schedule for launch of its Over the Top RTT apps by the end of 2017 and to launch an embedded RTT solution by year-end 2018. Therefore, it is not expected that waiver beyond December 31, 2017 will be necessary.

¹⁵ See *id.* ¶ 18.

¹⁶ April 6, 2017 IP-Voice Accessibility Status Report of AT&T submitted in GN Docket No 15-178, April 6, 2017

C. Expedited Consideration and Interim Grant of This Waiver Request Is Needed So That TracFone May Offer the Benefits of Wi-Fi Calling to Its Customers.

TracFone strives to offer its customers the highest quality service available. As a reseller, TracFone has arrangements with several facilities-based carriers that operate robust state-of-the-art networks and share TracFone's commitment to superior service. AT&T currently offers Wi-Fi calling to its customers. Commencing in June, AT&T allows its resellers to offer Wi-Fi calling to their customers. Wi-Fi calling extends calling areas beyond the traditional cellular network, enabling consumers to engage in voice communications in areas with weak or no cellular coverage, such as in buildings and rural areas. TracFone's end users, like AT&T's end users, should have equal access to all the benefits of having their service provided by AT&T's underlying network. Given that AT&T has already received a waiver allowing it to provide Wi-Fi calling that does not support TTY technology, there is no reason for delaying TracFone's customers -- consumers whose calls are routed on the same network to which AT&T's waiver attaches -- from having available the same Wi-Fi calling service. TracFone requests that the Commission consider its waiver request on an expedited basis and grant interim relief to TracFone while this request is pending so that TracFone may offer Wi-Fi calling to its customers as soon as it is available.¹⁷ TracFone remains committed to meeting the 2021 reseller compliance date. It is continuing to work with device manufacturers to implement its own embedded RTT solution by the 2021 compliance date established by the Commission for wireless resellers.

¹⁷ Expedited approval of the requested waiver, even on an interim basis, is especially important for those TracFone customers who use wireless devices which operate on the iOS operating system (such as Apple iPhones). Because Wi-Fi service can be provided using such devices by downloading an application provided by Apple, TracFone will be able to provide this service to its iPhone customers within thirty days if this waiver request is granted.

CONCLUSION

Accordingly, TracFone respectfully requests that the Commission grant TracFone's request for a temporary waiver to allow TracFone to offer IP-based Wi-Fi voice services to its customers whose calls are carried on AT&T's network.

Respectfully submitted,

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July 7, 2017